IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.298 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
NATHUBHAI H PATEL - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
(MR MM PATEL) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 24/11/2005
ORAL JUDGMENT
(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench 'B', has referred the following questions under Section 256(2) of the Income Tax Act,1961

(the Act) at the instance of the Commissioner of Income Tax, Ahmedabad:

For Assessment Year 1982-83:

(1) Whether, the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.1,33,000/- made by the I.T.O. on account of cost of construction of the building?

(2) Whether, the Appellate Tribunal is right in law and on facts in holding that running the Heart Hospital and the Intensive Coronary Care Unit is an independent business activity quite different from professional services rendered as a Physician and in further holding that the Intensive Coronary Care Unit is a small scale undertaking within the meaning of section 32A of the I.T. Act and directing the I.T.O. to allow investment allowance on Heart Monitoring Machine and tread Mill Machine in the hospital ?

(3) Whether, the Appellate Tribunal is

right in law and on facts in directing the ITO to allow additional depreciation without verifying the utilization and location of assets of air conditioners and fans ?

For Assessment Year 1983-84:

(1) Whether, the Income-tax Appellate Tribunal is right in law and on facts in holding that the running of heart hospital and the intensive coronary care unit is an independent business activity different from professional service rendered as physician by the assessee ?

(2) Whether, the Income-tax Appellate Tribunal is right in law and on facts in holding that the intensive coronary care unit is a small scale industrial undertaking within the meaning of section 32A of the I.T. Act 1961 and directing the ITO to allow investment allowance on the heart monitoring machine and tread mill machine in the hospital ?

(3) Whether the Income-tax Appellate

Tribunal is right in law and on facts in directing the ITO to allow additional depreciation without verifying the utilization and location of assets of air conditioners and fans ?

2. The Assessment Years involved are 1982-83 and 1983-84 and the relevant accounting periods are financial years 1981-82 and 1982-83 respectively.

3. The assessee, an individual, is a leading cardiologist, who at the relevant time was also running a heart hospital in which there was a Special Intensive Coronary Care Unit with sophisticated machines.

4. During the year under consideration, the assessee had constructed two floors on the existing floor of his residential bungalow. The Assessing Officer was of the opinion that the cost of construction as shown by the assessee was very low. He, accordingly, adopted the rate

of construction at Rs.1,000/- per sq. mtr. as against the rate of Rs.650/- which was the actual cost of construction shown by the assessee and estimated the cost of construction at Rs.3,81,000/-. After adjusting the cost of Rs.2,48,000/- estimated by the assessee, the Assessing Officer made an addition of Rs.1,33,000 treating it as the concealed income of the assessee.

5. During the year under consideration, the assessee had installed a heart monitoring machine and tread mill in the hospital. The assessee claimed investment allowance under Section 32A of the Act. The assessee also claimed additional depreciation on air conditioners and fans. The Assessing Officer rejected the claim on the ground that as the assessee was engaged in the medical profession, he was not entitled to investment allowance.

6. The assessee carried the matter in appeal before

the Commissioner of Income-Tax (Appeals) (CIT (Appeals), who vide his order dated 22.07.1986, allowed the appeal in relation to both the aforesaid grounds.

7. In Revenue's appeal, the Tribunal vide its order dated 29.06.1990 confirmed the order of the CIT (Appeals).

8. Heard Mrs.M.M.Bhatt, learned Standing Counsel for the applicant-revenue. Though served there is no appearance on behalf of the respondent-assessee.

9. In so far as question No.1 for Assessment Year 1982-83 is concerned, Mrs.Bhatt supported the findings of the Assessing Officer and submitted that the Assessing Officer was right in making the addition of Rs.1,33,000/-. As can be seen from the order of the Tribunal, the Tribunal has reiterated and confirmed the findings of the CIT (Appeals). Hence, it would be pertinent to

advert to the following findings of the CIT (Appeals):

"I have carefully heard the appellant and his counsel on this point. I have also gone through the detailed observations made by the ITO in his assessment order, and I have also had occasion to pursue the detail of the cost of construction and the explanations rendered by the appellant in this regard. Having regard to the totality of the facts and circumstances of the case, I agree with the appellant, that the ITO was not justified in adopting the rate of Rs.1,000/- per sq.mtr. as the cost of construction without any proper basis. The reasons forwarded by the appellant justifying as to how the cost of construction, which works out to Rs.650 per sq. mtr. was fair and reasonable in the case, are satisfactory and convincing. If the ITO had appreciated

the facts of the case in this perspective, he would have had no reason to take a different view in the matter. In any case, since the ITO has not located any defects in the valuation report of the Appellant's Registered Valuer and since no reference has been made on any of the points to the Departmental Valuer in this regard, I am of the opinion that the cost of construction as shown by the appellant being fair and reasonable needs to be accepted."

10. Thus, both the CIT (Appeals) as well as the Tribunal have given concurrent findings of facts after appreciating the evidence on record to arrive at the conclusion that the cost of construction as worked out by the assessee was fair and reasonable. Nothing has been brought on record on behalf of the Revenue to dislodge the said findings. In the

circumstances, there is no infirmity in the order of the Tribunal in deleting the addition of Rs.1,33,000/- made by the Assessing Officer on account of the construction of the building.

11. Accordingly, question No.1 in relation to Assessment Year 1982-83 is answered in the affirmative i.e. in favour of the assessee and against the revenue.

12. In so far as question No.2 for Assessment Year 1982-83 and question Nos.1 and 2 for Assessment Year 1983-84 are concerned, Mrs.Bhatt has submitted that the assessee was a Cardiologist and used the heart monitoring machine and tread mill machine only in relation to his professional activities as a physician and cardiologist and that the said machines were not used for the production of any article or thing. Reiterating the reasoning of the Assessing Officer, it was submitted that the claim for investment allowance in relation to the

aforesaid two machines had rightly been disallowed.

13. Mrs. Bhatt has very fairly drawn attention to a decision of this Court in the case of Natvarlal Ambalal Dave Vs. CIT (1997) 225 ITR 936, wherein this Court has held that an X-ray machine satisfies the conditions of section 32A of the Act, in that it is plant and machinery through which an article or thing could be produced for sale. It is further held, that merely because a person happens to be a professionally qualified doctor, it cannot be said that such person's activity cannot be treated as an activity of carrying on business. However, Mrs.Bhatt sought to distinguish the aforesaid decision by placing reliance upon a decision of the Andhra Pradesh High Court in the case of CIT Vs. Dr. S. Surender Reddy, (2000) 243 ITR 110 wherein it has been held that the report given by conducting the tests using equipment installed by the assessee did not amount to production of

an article or thing. It was further held that no article or thing was produced by the machinery while giving the report after conducting the pathological tests; that a person records readings by using machinery and, therefore, it could not be said that it is a thing or article. Hence, the equipment used for the purpose of conducting pathological test would not qualify for investment allowance. Mrs. Bhatt submitted that by analogy, the reports produced by the Heart Monitoring Machine and Treadmill cannot be said to be an article or thing as contemplated under the provisions of section 32A of the Act, and urged that the question be answered in favour of the revenue.

14. As can be seen from the order of the Tribunal, the Tribunal upon considering the composite functional aspects of the Heart Monitoring and Treadmill machines has found that the intensive coronary unit set up by the assessee wherein treatment which is rendered with the aid of the

aforesaid sophisticated machines is in the nature of an industrial undertaking which manufactures or produces articles or things by way of printing functional status of the heart on E.C.G. Paper through the D.C. Defibrillator recorder, while the patient undergoes stress test. The Tribunal also noted that apart from the assessee's patients, treatment with the aid of the aforesaid machines was also given to several outside patients. It is in these circumstances, that the Tribunal has held that the assessee is entitled to investment allowance in relation to the aforesaid machines.

15. This Court in the case of Natvarlal Ambalal Dave (supra) has held that an X-ray machine satisfies the conditions of section 32A of the Act, in that it is plant and machinery which produces an article or thing. In the facts of the present case when a patient is subjected to graded exercise on the Treadmill machine and the functional data of the heart operation is

recorded on the Heart Monitoring Machine, the functional status is recorded on the E.C.G. paper which is produced by the combined functioning of the aforesaid machines. Drawing an analogy from the aforesaid decision, the printing of the functional status on the E.C.G. paper can be said to be the production of an article or thing falling within the ambit of section 32A of the Act. Moreover, in the decision of the Andhra Pradesh High Court upon which reliance has been placed on behalf of the revenue, it has also been held in relation to X-ray machine, that what was produced by the X-ray machine was a different article from the film and, therefore, entitled for investment allowance. In the circumstances, the said decision does not carry the case of the revenue any further.

16. In the present case raw heat sensitive papers are introduced in the recorder at the central station of the unit and electrical activity of

the heart is recorded and electro-cardiograph comes out. This electro-cardiograph is quite different and distinct from the original paper. The paper that comes out as a processed paper through machines is not only totally different from the original paper, but such paper is not in any manner reusable in its original form. The processed paper is a very important record for the doctor and the patient. Thus, the processed paper in the form of electro-cardiograph is a totally different commodity as compared to the raw material inputs, which amounts to production of an article or thing, and satisfies the conditions laid down under Section 32A of the Act.

17. In the circumstances, applying the ratio laid down by this Court in the case of Natvarlal Ambalal Dave (supra) question No.2 in relation to Assessment Year 1982-83 and question Nos.1 and 2 in relation to Assessment Year 1983-84 are answered in the affirmative i.e. in favour of

the assessee and against the revenue.

18. In so far question No.3 for both the Assessment Years is concerned, additional depreciation qua air conditioners and fans stands on the same footing as the aforesaid machines and as such would be covered by the aforesaid decision of this Court. Moreover, in the aforesaid decision of the Andhra Pradesh High Court upon which reliance has been placed on behalf of the revenue it has been held that other electrical items such as stabilizer, electric fans, scanner and air conditioners used to keep analytical systems at a particular temperature were necessary for the purposes of production of article or thing and hence, would qualify for allowance. In the circumstances, question No.3 in relation to both the assessment years is answered in the affirmative i.e. in favour of the assessee and against the revenue.

19. The reference stands disposed of accordingly.

There shall be no order as to costs.

Sd/- Sd/-

(D.A.Mehta,J) (H.N.Devani, J)

m.m.bhatt